IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 6TH JUNE 2007 / 16TH JYAISHTA 1929

Crl.MC.No. 1719 of 2007()

O.R. 16/2007 OF ANCHAL RANGE
CRMP.2276/2007 of JUDL.MAGISTRATE OF FIRST CLASS-II
(FOREST OFFENCES),PUNALUR

.....

PETITIONER/ACCUSED:

ASHOK KUMAR, S/O.SADANANDAN,
KRISHNAVILSWOM, EZHAMKULAM MURI,
THINKAKKALKARIKKAM VILLAGE,
KOLLAM DISTRICT.

BY ADV. SRI.SIJU KAMALASANAN

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
FOREST RANGE OFFICER, ANCHAL THROUGH
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 06/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

- -

Crl.M.C.No. 1719 of 2007

- -

Dated this the 6th day of June, 2007

O R D E R

The petitioner is the owner of a vehicle, which is involved in a crime registered under the Forest Act alleging illicit transportation of river sand. The petitioner applied for interim release of the vehicle before the learned Magistrate. The learned Magistrate, by the impugned order, rejected the said prayer on the ground that the vehicle was involved in an identical offence earlier and was released to the very same petitioner. As the same vehicle was again used for committing the same offence, the learned Magistrate felt that the petitioner is not entitled for release of the vehicle.

2. The learned counsel for the petitioner submits that the vehicle is not involved in the crime either on the earlier occasion or now. The allegations raised are false. Those false allegations raised should not have weighed with the learned Magistrate while considering the prayer for interim release of the vehicle. At any rate, subject to appropriate conditions interim release must have been ordered. The learned Magistrate should have noted the dictum in

Sunderbhai Ambalal Desai v. **State of Gujarat** (AIR 2003 SC 638), which frowned against retention of property in court unnecessarily resulting in deterioration and loss for such property.

3. Notice was given to the learned Prosecutor. The learned Prosecutor only submits that the State does not oppose the release of the vehicle, but appropriate and stringent conditions and bank guarantee for the value of the vehicle may be insisted. Cash deposit or maximum amount of fine also may be insisted, submits the Prosecutor.

4. I find the said request to be absolutely justified. The learned counsel for the petitioner then prays that he may be given one month's time to comply with the conditions.

5. This Crl.M.C. is accordingly allowed. The vehicle shall be released to the petitioner on the following terms and conditions.

(1) He shall produce all documents to satisfy the learned Magistrate that he is the owner entitled for possession of the vehicle.

(2) He shall execute a bond for an amount equal to the value of the vehicle and shall make a cash deposit of Rs.25,000/- and also offer bank guarantee for the balance amount (bond amount less cash deposit). He shall

have time for a period of one month to make such cash deposit and to produce the bank guarantee.

(3) The petitioner shall in the bond to be executed by him specifically undertake that the vehicle shall not hereafter be used for the commission of any offence.

(R. BASANT)
Judge

tm